

5-8-06
DAC \$ IFW
PATENT

Practitioner's Docket No. 69415.00101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor application of: Man C. Niu

Application No.: 09/740,582

Group No.: 1638

Filed: 12/19/2000

Examiner: Stuart F. Baum

For: METHODS FOR EFFECTUATING mRNA TRANSFER OF GENETIC INFORMATION
BETWEEN SPECIES AND PRODUCT OF THE SAME

05/09/2006 FFANAEIA 00000113 501943 09740582

01 FC:2453 750.00 DA

Charles N. Quinn
Reg. No. 27,223
Fox Rothschild LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103
Tel: 215-299-2135
Fax: 215-299-2150
Email: cquinn@foxrothschild.com
Customer No. 34661
Deposit Account: 50-1943

PETITION TO REVIVE APPLICATION ABANDONED UNINTENTIONALLY
FOR FAILURE TO FILE AN APPEAL BRIEF

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*
(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

G deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents,
P.O. Box 1450, Alexandria, VA 22313-1450.

37 C.F.R. § 1.8(a)

G with sufficient postage as first class mail.

37 C.F.R. § 1.10*

☒ as "Express Mail Post Office to Addressee"
Mailing Label No. EV33431198545 (mandatory)

TRANSMISSION

G facsimile transmitted to the Patent and Trademark Office, (571) 273-8300.

Signature

Date: MAY 4, 2006

RHONDA BRYANT
(type or print name of person certifying)

* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

1. This application became abandoned on October 24, 2006.
2. This application became abandoned because the failure to prosecute by filing an appeal brief was an unintentional delay. The entire delay in filing the required reply from the due date until the filing of this petition was unintentional 37 C.F.R. § 1.137(b)(3).
3. Reply

With respect to the outstanding requirements, applicant files herewith an RCE accompanied by a submission and the requisite fee in compliance with 37 C.F.R. § 1.114.

4. Fee (37 C.F.R. ' 1.17(m))

Applicant claims small entity status under 37 C.F.R. 1.27.

Small entity — fee \$750.00.

5. Fee Payment

Authorization is hereby made to charge the amount of \$750.00 to Deposit Account No. 50-1943. A duplicate of this paper is attached.

6. Other

A Notice of Abandonment has not been received.

To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of this paper and/or any accompanying papers submitted herewith, please charge all such fees to Deposit Account 50-1943.

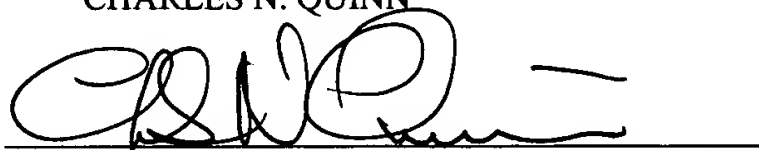
Date: 4 May 2006



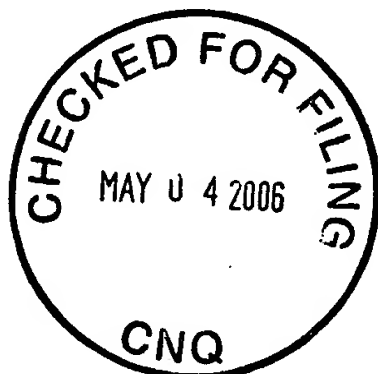
(Signature of person making statement that abandonment was unintentional)

CHARLES N. QUINN

Date: 4 May 2006



Charles N. Quinn
Registration No. 27,223
Fox Rothschild LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103
215-299-2135
Customer No. 34661
Attorney for Applicant





ATTORNEY DOCKET: 69415.00101
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent application of:
Man C. Niu

Group Art Unit: 1638

Serial No.: 09/740,582

Examiner:
Stuart F. Baum

Filed: December 19, 2000

For: METHODS FOR EFFECTUATING mRNA
TRANSFER OF GENETIC INFORMATION
BETWEEN SPECIES AND PRODUCT OF THE
SAME

Charles N. Quinn
Reg. No. 27,223
Fox Rothschild LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103
Tel: 215-299-2135
Fax: 215-299-2150
Email: cquinn@foxrothschild.com
Deposit Account: 50-1943
U.S.P.T.O Customer No. 34,661

**SUBMISSION ACCOMPANYING
REQUEST FOR CONTINUED EXAMINATION**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a submission accompanying a request for continued examination of the above-referenced United States patent application, which accompanies a petition to revive the application, with the application having been unintentionally abandoned due to failure to timely file an appeal brief after a notice of appeal had been filed, with the failure to timely file the appeal brief being due to an error by applicant's attorney's docketing clerk.

The salient points regarding the request for continued examination submitted herewith, as opposed to an appeal brief, are set forth below.

In an official action dated 24 February 2005, which was a final official action, the examiner stated that it had been noted in the official action of 6 November 2003 that claims 33 and 47 would be allowable if rewritten in independent form to include all limitations. The examiner further stated that in the amendment applicant filed dated 3 May 2004, that applicant “has removed limitations to the claims which now make the claims not allowable, i.e., of corn variety 27-1.”

In response to that comment, applicant submitted an amendment after final rejection on 20 May 2005, specifically amending claims 33 and 47 to include the limitation directed to “corn variety 27-1” as had been suggested by the examiner in the official action of 24 February 2005. Having filed the 20 May 2005 paper and having amended claims 33 and 47 to include the very limitation that the examiner stated in the 24 February 2005 official action was necessary to make the claims allowable, applicant expected to receive an advisory action noting that claims 33 and 47 were now allowable since those claims had been amended in precisely the manner suggested by the examiner as being needed to make those claims allowable.

Instead, applicant received an advisory action dated 28 June 2005, noting that the amendment after final rejection would not be entered because that paper raised “new issues that would require further consideration and/or search (see note below);” where the note attached to the official action stated “the recitation ‘corn plants of variety 27-1’ raised 112 first paragraph issues”.

Applicant's undersigned counsel was puzzled by the assertion that the reintroduction of "the corn plants of variety 27-1" limitation raised new issues since the limitation of corn plants of variety 27-1 had previously been in claims 33 and 47 and those claims had been noted as being allowable, if they were rewritten into independent form to include all limitations, in the official action of 6 November 2003. (In an amendment dated 3 May 2004, applicant asserted that those limitations were not necessary to the allowability of the claims and had removed those limitations.)

In the final official action of 24 February 2005, the examiner correctly noted that applicant had removed the limitations to claims 33 and 47 in the 3 May 2004 amendment and contended that by removing those limitations, namely the limitation "of corn variety 27-1", this had made the claims not allowable.

Applicant had then filed applicant's 20 May 2005 paper, responding to the final office action of 24 February 2005 and amending claims 33 and 47 to place the limitations of "corn variety 27-1" back into the claims, as suggested by the examiner. Applicant believed this then made the claims allowable.

In reviewing the 28 June 2005 advisory action in which the examiner stated that the recitation of "corn plants of variety 27-1" raised 112 first paragraph issues which were new issues that would require further consideration and/or search", applicant's undersigned attorney was perplexed. From the foregoing recitation of part of the chronological of this application it is clear that the issue of inclusion or exclusion of the limitation "corn variety 27-1" had been the subject of claim amendments in previous papers back and forth between applicant and the examiner. This being the case,

applicant's undersigned attorney could hardly see how inclusion of the limitation "corn plants of variety 27-1" raised new issues requiring any further consideration or search.

Applicant's attorney called the examiner on Tuesday, 4 April 2006 to discuss this matter with the examiner. Applicant's attorney was in the course of preparing a brief for this application on appeal.

At that time, the examiner noted that the time for filing the brief had expired. Applicant's undersigned counsel verified this and found a docketing error which had led to misdocketing of the date for submission of the appeal brief. Accordingly, the examiner advised that it would be necessary to file a petition to revive the application. Applicant's attorney agreed and prepared a request for continued examination. This submission accompanies the request for continued examination which is being submitted with the petition to revive the application.

Upon revival of the application and consideration of this submission, applicant respectfully submits that continued examination by the examiner should clarify the situation as respecting the limitation to corn variety 27-1 and result in allowed claims in this application.

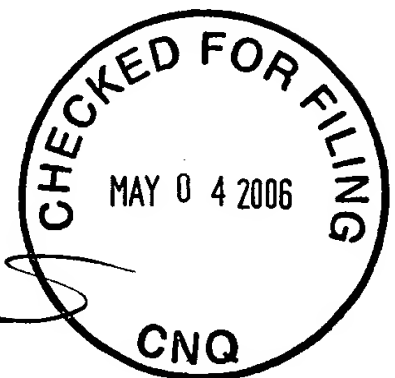
To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of this paper and/or any accompanying papers submitted herewith, please charge all such fees to deposit account 50-1943.

Date: 4 Mar 2006

Respectfully submitted,

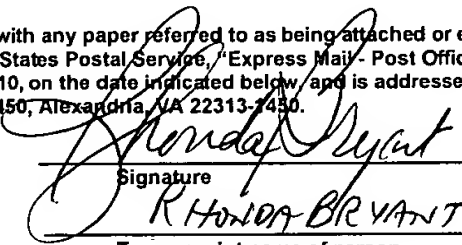


CHARLES N. QUINN
Registration No. 27,223



Attorney for Applicant

Fox Rothschild LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103
Tel: 215-299-2135
Fax: 215-299-2150
email: cquinn@foxrothschild.com

Certificate of Mailing Under 37 C.F.R. 1.10	
EXPRESS MAIL NO.:	<u>EV334311985US</u>
<small>I hereby certify that this paper, along with any paper referred to as being attached or enclosed and/or fee is being deposited with the United States Postal Service, "Express Mail - Post Office to Addressee" service under 37 C.F.R. 1.10, on the date indicated below, and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-7450.</small>	
<u>MAY 4, 2006</u> Date of Deposit	 Signature <u>RHONDA BRYANT</u> Type or print name of person

